

MAY 16 1997

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE  
BY Kathy

In the Matter of:

Docket No. 97A-082-INS

**Francisco Barraza III**  
License No. 241632


**ORDER SUMMARILY SUSPENDING  
LICENSES AND NOTICE OF  
HEARING**

Respondent.

The Arizona Department of Insurance (the "Department") alleges below that Francisco Barraza III ("Respondent") has violated the provisions of A.R.S. Title 20. In light of the serious nature of these allegations, the Director of Insurance (the "Director") finds that the public health, safety and welfare imperatively require emergency action, within the meaning of A.R.S. § 41-1064(C).

THEREFORE, IT IS ORDERED summarily suspending the Arizona insurance licenses held by Respondent, effective immediately, pending the proceedings for revocation commenced this date.

EFFECTIVE this 16th day of May, 1997.

  
JOHN A. GREENE  
Director of Insurance

PLEASE TAKE NOTICE, that pursuant to the provisions of A.R.S. §§ 20-161 through and including 20-165 and A.R.S. Title 41, the above captioned matter will be heard before the Director or the Director's duly designated representative, on the 22nd day of July, 1997 at

1     9:00     a.m., at the Office of Administrative Hearings, 1700 West Washington, Suite 602,  
2     Phoenix, Arizona (the "Hearing").

3             Motions to continue this matter shall be made in writing to the Administrative Law Judge not  
4     less than five business days before the date set for the hearing. A copy of any motion to continue shall  
5     be mailed or hand delivered to the opposing party or attorney on the same date of filing with the  
6     Arizona Department of Insurance.

7             A.R.S. § 20-164 entitles any person affected by this hearing to appear in person and by  
8     counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all  
9     documentary evidence, to examine all witnesses, to present evidence in support of the person's  
10    interests, and to have subpoenas issued by the Administrative Law Judge to compel attendance of  
11    witnesses and production of evidence in the person's behalf.

12            Questions concerning issues raised in this Notice of Hearing should be directed to  
13    Assistant Attorney General Michael De La Cruz, (602) 542-3702, 1275 West Washington,  
14    Phoenix, Arizona 85007.

15  
16                                   NOTICE OF APPLICABLE RULES

17            On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101  
18    through R20-6-115, setting forth the rules of practice and procedure applicable in contested cases  
19    before the Director of Insurance. The hearing will be conducted pursuant to those rules.

20            PURSUANT TO A.A.C. R-20-6-106, RESPONDENT SHALL FILE A WRITTEN  
21    ANSWER WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND  
22    SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY  
23

1 GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S  
2 POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION  
3 IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO  
4 BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED  
5 WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENT SHALL BE DEEMED IN  
6 DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS IN THE NOTICE OF  
7 HEARING TO BE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING  
8 SUSPENSION, REVOCATION, DENIAL OF A LICENSE, OR DENIAL OF A RENEWAL OF A  
9 LICENSE, IMPOSITION OF A CIVIL PENALTY AND/OR ORDER RESTITUTION TO ANY  
10 PARTY INJURED.

11 The Department alleges:

12 1. Respondent holds, and at all material times held Arizona license number 241632 to transact  
13 business as a life, disability, property and casualty insurance agent. The life and disability portion of  
14 the license expires on August 31, 1997 and the property and casualty portion of the license expires on  
15 August 31, 1998.

16 2. On or about January 4, 1997, Respondent received three-thousand-one-hundred-twenty dollars  
17 (\$3,120) from Ben Esacalante of Esacalante Engineering Enterprise, LLC ("Escalante") as premium  
18 for general liability and workers compensation insurance coverage.

19 3. On or about January 4, 1997, Respondent issued a certificate of insurance to Escalante  
20 representing Reyneer [sic] Casualty Insurance Company as the general liability insurance carrier and  
21 Intergon [sic] Choice Insurance Services as the workers compensation insurance carrier. The correct  
22 names of the insurers are Rainier Insurance Company ("Rainier") and Integon Insurance ("Integon").  
23

1 4. Respondent failed to complete and or forward to any application for insurance on behalf of  
2 Escalante.

3 5. Respondent also failed to submit any of the premiums he collected from Escalante to Rainier,  
4 Integon or any other insurer.

5 6. Respondent failed to procure general liability and workers compensation insurance for  
6 Escalante though Rainier, Integon or any other insurer authorized to do business in this state.

7 7. To date, Escalante has not received a refund of his premium monies.

8 8. Respondent's conduct, as alleged above, constitutes the willful violation or noncompliance  
9 with any provision of Title 20, within the meaning of A.R.S. § 20-316(A)(2).

10 9. Respondent's conduct, as alleged above, constitutes misappropriation or conversion to his own  
11 use or illegal withholding of monies belonging to insurers and others and received in or during the  
12 conduct of business under the license or through its use within the meaning of A.R.S. § 20-316(A)(4).

13 10. Respondent's conduct, as alleged above, constitutes a conduct of affairs under the license  
14 showing licensee to be incompetent or a source of injury and loss to the public or any insurer within  
15 the meaning of A.R.S. § 20-316(A)(7).

16 11. Respondent's conduct as alleged above constitutes the making of assertions, representations,  
17 or statements with respect to the business of insurance which are untrue, deceptive or misleading,  
18 within the meaning of A.R.S. § 20-444(A).

19 12. Respondent's conduct as alleged above constitutes the diversion of the monies of an insurer or  
20 other person, within the meaning of A.R.S. §20-463(A)(4)(a) and (b).

21 . . .

22 . . .

1           WHEREFORE, if after hearing, the Director finds the grounds alleged above, the Director may  
2 suspend, revoke or refuse to renew Respondent's insurance license or order restitution, or order  
3 Respondent to pay civil penalties, pursuant to A.R.S. §§ 20-316 and 20-456.

4           Pursuant to A.R.S. § 20-150, the Director delegates the authority vested in the Director of  
5 Insurance of the State of Arizona, whether implied or expressed, to the Director of the Office of  
6 Administrative Hearings or his designee to preside over the hearing of this matter as the  
7 Administrative Law Judge, to make written recommendations to the Director of Insurance consisting  
8 of proposed findings of fact, proposed conclusions of law, and a proposed order. This delegation  
9 does not include delegation of the authority of the Director of Insurance to make the order on hearing  
10 or other denial decision in this matter.

11           Pursuant to A.R.S. §41-1092.01, your hearing will be conducted through the Office of  
12 Administrative Hearings, an independent agency. Enclosed is a copy of the procedures to be followed.

13           Persons with disabilities may request reasonable accommodations, such as interpreters,  
14 alternative formats or assistance with physical accessibility, by contacting the office of administrative  
15 hearings at (602) 542-9825. Requests should be made as early as possible to allow time to arrange the  
16 accommodation.

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18           EFFECTIVE THIS 16 day of May, 1997.

19  
20             
21           \_\_\_\_\_  
22           JOHN A. GREENE, Director  
23           Arizona Department of Insurance

1 Copies of the foregoing mailed/delivered  
this 16<sup>th</sup> day of May, 1997, to:

2 Francisco Barraz, III  
3 736 North Center Avenue  
4 Casa Grande, Arizona 85222

5 Assistant Attorney General  
6 Consumer Protection and Antitrust Section  
7 1275 West Washington  
8 Phoenix, Arizona 85007  
9 Attorney for the Department of Insurance

10 Charles R. Cohen, Deputy Director  
11 John Gagne, Assistant Director  
12 Maureen Catalioto, Licensing Supervisor  
13 Arizona State Department of Insurance  
14 2910 North 44th Street, Suite 210  
15 Phoenix, Arizona 85018-7256

16 Mario Guevara  
17 Office of Administrative Hearings  
18 1700 West Washington, Suite 602  
19 Phoenix, Arizona 85005

20 A courtesy copy of this Notice of Hearing has been mailed/delivered to the persons listed  
21 below. If you are listed below, you will receive no further notices or documents concerning this  
22 matter other than the Director's final order. Information about the status of this matter, including  
23 whether the hearing date has been changed, may be obtained by contacting the Department of  
Insurance at (602) 912-8454 or the Assistant Attorney General identified above, at (602) 542-3702.

Escalante Engineering Enterprise, LLC  
P.O. Box 157  
Sells, Arizona 85634

Rainier Insurance Company  
520 S.W. 6th, Suite 500  
Portland, Oregon 97204

1 Integon Insurance

P.O. Box 1424

2 Winston Salem, North Carolina 27102-1424

3  
4 Curvey W. Burton / Kath  
Curvey Walters Burton